

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NO. 1:21-cv-00183-MR

DUSTIN JAY SURRETT,)
Petitioner,)
vs.) **MEMORANDUM OF**
JOSH STEIN, Attorney General of) **DECISION AND ORDER**
the State of North Carolina,)
Respondent.)

)

THIS MATTER is before the Court *sua sponte*.

Pro se Petitioner Dustin Jay Surrett (“the Petitioner”) filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on July 16, 2021. [Doc. 1]. The Petitioner did not pay the required filing fee or submit a motion to proceed *in forma pauperis*.

On July 19, 2021, the Clerk of Court mailed a Notice of Deficiency to the Petitioner informing him that he must either pay the filing fee or move to proceed *in forma pauperis* within 21 days. [Doc. 2]. The Petitioner was cautioned that “[f]ailure to do so may result in the dismissal of this action without prejudice for failure to prosecute.” Id.

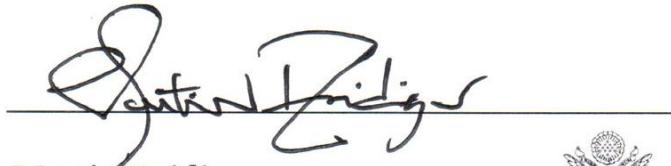
The Petitioner has failed to comply with the Notice of Deficiency and the time to do so has expired. The Petitioner appears to have abandoned this action and the Court is unable to proceed. This case will therefore be dismissed without prejudice. See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

IT IS, THEREFORE, ORDERED that this action is **DISMISSED WITHOUT PREJUDICE.**

IT IS FURTHER ORDERED that the Clerk of Court is directed to terminate this action.

IT IS SO ORDERED.

Signed: November 10, 2021



Martin Reidinger
Chief United States District Judge

